



GFS Appeals Committee

R-v- [REDACTED]

Appeal of [REDACTED]

Introduction

This case falls to be remunerated under the CPS Graduated Fee Scheme D and concerned allegations of rape, listed for trial at [REDACTED] Crown Court between [REDACTED] and [REDACTED] 2020.

Issue in appeal

The issue in appeal relates to payment for time spent reviewing telephone download material and video files.

Counsel and the CPS agree that some of that electronic material was served in evidence (having been printed out as part of prosecution schedules). The issue in dispute is whether the remainder of the material was served in evidence (or amounts to unused material) and its relevance to the calculation of counsel's fee.

Counsel's position

Counsel submits that all the electronic material was served in evidence and that counsel is therefore entitled to be paid for "reasonable time spent viewing the material at the appropriate GFS hourly rate" in accordance with paragraph 71(b) MOG. While counsel acknowledges that the printed material was included within the number of pages of prosecution evidence (and, therefore, contributed to the determination of this case as being eligible for an "enhanced" base fee), it is submitted that this should not prevent further payment for the time spent viewing all of the electronic material.

CPS position

The CPS maintain that the discs containing the telephone download were never formally served in evidence in their entirety. At all times, it remained as unused material, with only relevant parts extracted and formally served, in accordance with the legal guidance on the service of electronic material. Accordingly, that material does not constitute material falling within paragraph 71(a) and, instead, falls under paragraph 73 of the guidance, which does not attract separate payment.

The CPS Fee Scheme

The relevant section of the CPS Graduated Fee Scheme Manual of Guidance (MOG) for Scheme D reads as follows:

Electronic Material

71. Evidential material which is produced and served in an electronic format, such as images from a computer copied to disc or documents scanned on to disc, should be dealt with as follows:
 - a) Witness statements and records of defendant interviews formally served in evidence will always be counted as pages. If paper pages of exhibits are scanned and



produced on disc for convenience, they should be counted as pages for the purpose of remunerating the advocate.

- b) If, however, electronic media material, such as telephone data and billing, a copy of a computer hard drive or a CCTV recording, is served on disc, the advocate is paid for any reasonable time spent viewing the material at the appropriate GFS hourly rate. The advocate must provide detailed work records of all work undertaken in the case highlighting that work which relates solely to the review of electronic material.

Material that does not qualify as a page under paragraph 71(a), can never be treated as a page even if it is subsequently printed off into paper format. However, any page that is printed directly from a disc and copied for use by a jury during an effective trial will be added to the page count subject to the principle that the same page will only be counted once.

72. If the advocate is to be paid 'pages' because the material served on disc falls into category 71(a) above, the advocate will not be paid viewing time in addition for consideration of that material on disc.
73. Payment will only be made for viewing 'evidence' on disc. No payment will be made for time spent viewing 'unused' electronic material.

Unused Material

74. There is no additional fee payable to the advocate for pages of unused material. Payment for this work is included in the main hearing fee.

Consideration by the committee

The Fees Appeal Committee convened to consider the appeal on 7 May 2021 and considered the following documents before arriving at their decision:

- GFS Manual of Guidance scheme D
- Taxation note from Counsel 20 February 2021
- Final CPS written reasons 26 March 2021
- Response from chambers 30 March 2021

The Committee considered the information advanced by counsel as well as all the other documentation listed above, including the relevant paragraphs of the Manual of Guidance.

Counsel and the CPS agree that at least some of the electronic material in this case was printed and served as evidence – it is referred to in counsel's note as "the Prosecution Schedules". That evidence was counted towards the number of pages of prosecution evidence for the purpose of paragraph 58 MOG. In the view of the Panel, that was correct, in accordance with paragraph 71(b) MOG.

The CPS and counsel disagree about the remaining electronic material. Counsel asserts that all of the electronic material was served in evidence –saying that, "*the discs were served as part of the evidence upon which the Prosecution relied. They were the raw phone data which provided the evidential foundation for the Prosecution Schedules*". It is clear from counsel's own note, however, that not all the electronic material was evidence. In paragraph 7(a) of counsel's note, for example, counsel refers to the extraction of material from the discs for use in the jury material and in paragraph 7(c) counsel distinguishes between those



downloaded communications “*which ought to be placed before the jury, as opposed to those which would not*”, referred to as the whittling down of the electronic material. That is consistent with the CPS’s note, which refers to “extracts” from the discs of electronic materials being formally served as evidence,

It is the view of the Committee that counsel is incorrect when it is asserted that the discs were “*served as ... evidence*”. Some of the material on the discs was formally served in evidence as part of the prosecution schedules, but the remainder of the material on the discs formed unused material. The entirety of the discs were not, therefore, “served in evidence” on the defence. Only that material which was relied on as evidence was formally served (via the prosecution schedules). That material, having been printed and served, was counted towards the number of pages of prosecution evidence under the paragraph 71(b) MOG. The remainder of the material on the discs was unused material and disclosed to the defence as such. It being unused material, it was not relevant to the calculation of counsel’s fee (see paragraphs 73 and 74 MOG)

Counsel also points to paragraph 71(b) MOG, which refers to “*telephone data [...] served on disc*”, to substantiate the submission that the entirety of the discs were served in evidence (paragraph 13, counsel’s note). This is a misreading of the meaning and effect of paragraph 71(b) MOG. That paragraph merely gives examples of the kinds of electronic media material that may be served in evidence (as is clear from use of the words “such as”). It does not suggest that whenever such material is present in a case it necessarily has the status of formal evidence. Indeed, paragraph 73 MOG expressly recognises that electronic material may amount to unused material and not evidence.

Ruling

For reasons outlined above the appeal is dismissed.

The Committee was content that the CPS have applied the guidance around both used and unused electronic material from the MOG Scheme D correctly